THE DISCRETION OF THE MUNICIPAL EXECUTIVE IN THE ENFORCEMENT OF CRIMINAL LAWS. — The current discussion about the enforcement of criminal laws in New York City involves the question whether the mayor possesses any discretion in the administration of such laws. It seems to be contended by many that, under all circumstances, the executive is bound to enforce the laws strictly and without discrimination. It is submitted that this is a mistaken view, and that under certain conditions a considerable amount of discretion must rest with the mayor. If, for instance, there are more criminal statutes than the administration is able to enforce strictly, or if the strict enforcement of one law would result in the neglect of other duties, there must be some official to decide which laws shall first receive attention, and in what manner all the laws shall be enforced. The head of the executive department of the municipality would seem logically, if not necessarily, the person to make this decision. If, in New York City, the laws are so numerous that the strict enforcement of a statute declaring Sunday liquor-selling a *malum prohibitum* can be obtained only by neglecting the suppression of murder, robbery, assault and kindred crimes, *mala in se*, which result in a breach of the public peace, it would seem to be the wise and proper course for the mayor to direct the activities of the administration primarily toward the matters of most vital concern to the community. Whether such a situation exists, and, if so, what is the proper policy for the executive, are political questions the decision of which must necessarily be left to the officer who possesses the power of discretion — namely, the administrative head of the municipality.

This raises the further question as to the extent of his power, in cases where local authorities are entrusted with the enforcement of a general law. The "Liquor Tax" Law, about which interest is centred, is a general statute, and in its provisions forbidding Sunday sales is of universal application throughout the state. 1896 LAWS OF NEW YORK, Vol. I, 112, § 31 a. Its enforcement, however, is placed in the hands of locally elected officials. These officers as a matter of fact are practically independent of central control. See 1 GOODNOW, COMP. ADM. LAW, 228. In New York, to be sure, the chief municipal and county officers are subject to removal by the governor. 1897 LAWS OF NEW YORK, Vol. III, 378, § 122. But this power is rarely exercised except in cases of corruption, or conspicuous misconduct in office. As a result, while they are in a sense state officials, municipal officers are responsible primarily to the voters of the city for their enforcement of the laws. It is obvious that when there is a strong public sentiment against strict enforcement of certain laws, the administration will reflect this feeling of the local community, however stringent may be the terms of the general statute. The result is much the same as if local option were allowed in the enactment of the laws. The chief objection to this method of securing local option is that the habitual non-enforcement of certain laws in a community tends to create contempt for law in general. It is submitted that, whatever its weight may be, this argument is one which should be addressed to the legislature to induce a grant of the local option system of legislation, rather than to the local executive, to restrain him from a liberal enforcement of existing laws.

There is also a second class of statutes the enforcement of which must be left to the discretion of the mayor. Many statutes are never strictly enforced and are probably not intended to be — such as anti-trust laws

and the recent New York Tenement House Act. In this class of statutes, it is practically impossible for the legislature to lay down a clear line between cases of legality and illegality; a rule is adopted broad enough to cover all cases, but the law is to be enforced only when the good sense of the executive prompts him to act. As such laws do not differ in appearance from those requiring strict enforcement, it must be for the executive to decide to what class each statute belongs, and the power of discretion thus placed in his hands is very wide. It may be that liquor laws are not within the class which requires liberal enforcement, but this is a political question to be decided by the mayor, who is responsible primarily to the people of the city for the wisdom and good sense of his decision.

This brief consideration of the necessities and results of our system of local administration seems to make it clear that, in the present situation in New York City, the mayor should be regarded as possessing the right, in the enforcement of criminal laws, to exercise a wide discretion; though the exact limits of that discretion are perhaps somewhat difficult to define.

STATE REGULATION OF RAILROAD RATES AS AFFECTING INTERSTATE COMMERCE. — Two recent decisions of the federal supreme court deal with the effect of the commerce clause of the federal constitution upon the powers of the states to regulate railroad charges. A constitutional provision of Kentucky forbids a carrier, except by permission of a railroad commission, charging more for a short than a long haul within which the short is included. Actions were brought for violations of this provision. In one case both the long and short hauls were within Kentucky territory, and it was held that although the enforcement of such a regulation under those circumstances might somewhat affect interstate rates the result was too indirect to constitute an interference with interstate commerce. *Louisville & Nashville R. R.* v. *Kentucky*, 22 Sup. Ct. Rep. 95. In the second case the short haul was from Franklin, Ky., to Louisville, Ky., and the long haul for which less was charged was from Nashville, Tennessee, to Louisville, both hauls being in the same direction and the former included within the latter. The railroad alleged that the lower rate from Nashville was necessitated by water competition between that point and Louisville, that the charge from Franklin was reasonable, and that if compelled to equalize the two rates it would raise the Nashville rate. The court held that under these circumstances the state regulation amounted to an interference with interstate commerce, and was invalid. *Louisville & Nashville R. R.* v. *Eubank*, decided January 27, 1902. Justices Gray and Brewer dissented upon the ground that the state had a right to fix the rate from Franklin to Louisville, and in adopting a standard might select the rate fixed by the carrier itself for longer hauls over the same road and that in so doing the state was regulating local rates rather than the standard.

The two cases illustrate the difficulty and delicacy of the question that arises where the exercise by the state of its power to regulate rates affects interstate commerce. It is obvious that all state regulation of common carriers in some degree influences interstate commerce, and it is well settled that a merely incidental effect upon that commerce will not invalidate the regulation by the state of public corporations